

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES HOLSAPPLE, M.D.,

Plaintiff,

-against-

11-CV-110

UNIVERSITY HOSPITAL,

Defendant.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

Plaintiff commenced this action asserting claims under the Federal False Claims Act, 31 U.S.C. § 3730(h), and New York State Labor Law § 741. See Compl. dkt. # 1. Plaintiff asserted federal question subject matter jurisdiction based on the federal claim and requested the court to exercise supplemental jurisdiction over the state law claim. Id. ¶ 3.

On March 7, 2011, Defendant moved pursuant to Fed. R. Civ. P. 12(b)(1) and (6) to dismiss the Complaint. Dkt. # 5. Defendant argued, *inter alia*, that the Eleventh Amendment barred the federal claim and that the Court should decline to exercise supplemental jurisdiction over the state law claim. Id.

On April 4, 2011, Plaintiff filed an Amended Complaint re-asserting the Federal

False Claims Act and New York Labor Law § 741 claims, and adding a claim of unlawful retaliation in violation of the free speech protections of the New York State Constitution. See Am. Compl., dkt. # 7. On April 5, 2011, Defendant filed a letter-motion asking the Court to strike the Amended Complaint on the grounds that the pleading, filed without leave of court, was untimely under Fed. R. Civ. P. 15(a)(1)(B) because it was not filed within twenty-one (21) days of the date of service of Defendant's motion to dismiss. See Ltr. Mot., dkt. # 8. Plaintiff responded by conceding that leave of court was required but not obtained. Dkt. # 10. He asserted that, if the case survived the dismissal motion, he would seek leave to amend. Id.

On April 21, 2011, Plaintiff filed his response to Defendant's dismissal motion. Dkt. # 13. He indicated that he did not oppose dismissal of the Federal False Claims Act claim or Defendant's request that the Court decline to exercise supplemental jurisdiction over the New York State Labor Law claim. Id.

II. DISCUSSION

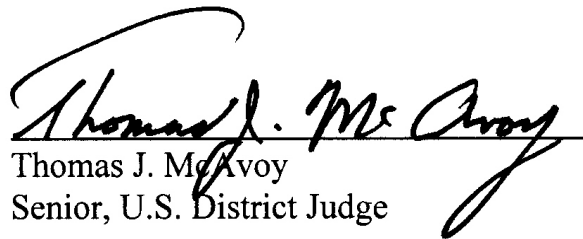
Based on Plaintiff's concessions, Defendant's motion to dismiss the Complaint is granted. The Federal False Claims Act claim is barred by the Eleventh Amendment and must be dismissed. See Garcia v. SUNY Health Sciences Ctr. of Brooklyn, 280 F.3d 98, 107 (2d Cir. 2001); Dube v. SUNY, 900 F.2d 587, 594 (2d Cir.), cert. denied, 501 U.S. 1211 (1991). Having dismissed the only claim invoking federal question jurisdiction in this matter and in light of the early stages of this case, the Court declines to exercise supplemental jurisdiction over the state law claim.

III. CONCLUSION

For the reasons discussed above, Defendant's motion to dismiss the Complaint [dkt. # 5] is **GRANTED** and the Complaint is **DISMISSED**. Defendant's motion to strike the Amended Complaint [dkt. # 8] is **GRANTED**. The Clerk of the Court is directed to close the file in this matter.

IT IS SO ORDERED

DATED: May 3, 2011


Thomas J. McAvoy
Senior, U.S. District Judge